IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL REVISION APPLICATION NO.43 OF 2006

Avinash Batra ...Applicant

Vs.

State of Maharashtra & Anr. ...Respondents

Shri Jeffrey Joseph for the Applicant.
Shri U.V.Nikam, A.P.P. for the State.
Shri Aabad H.H.Ponda for the Respondent No.2.

CORAM : A. S. OKA, J.
DATE : OCTOBER 07, 2006.

JUDGMENT:

1. Rule. The learned counsel appearing for the second Respondent waives service. The learned A.P.P. waives service for the first Respondent. Taken up for hearing forthwith.

2. The challenge is to the judgment and order dated 29th November, 2005/ 01st December, 2005 passed by the learned Sessions Judge by which revision Application filed by the second Respondent has been allowed and order of discharge passed in favour of the Applicant by the Additional Metropolitan Magistrate, 40th Court, Girgaum, Mumbai has been quashed and set aside.

3. One of the submissions made by the learned

counsel for the Applicant is that evidence was led before charge and the said evidence is not considered by the learned Additional Sessions Judge. Faced with this situation, the learned counsel appearing for the second Respondent fairly states that revision Application may be sent back to the Sessions Court for fresh hearing so that the Sessions Court can consider the evidence on record and pass appropriate order.

4. In view of this submissions, I pass the following order:

(i) The impugned Judgment and Order dated 01st December, 2005 is quashed and set aside.

(ii) The Revision Application No.962 of 2004 is restored before the Sessions Court at Mumbai.

(iii) The parties are directed to appear before the learned Sessions Judge, Mumbai on 06th November, 2006 at 11.00 a.m. The learned Sessions Judge, Mumbai may himself hear the revision Application or may transfer it to any other court as per his administrative convenience.

(iv) Considering the fact that revision Application is of the year 2004, the concerned court will decide the revision Application as expeditiously as possible and preferably before end of February 2007.

(v) It is made clear that no adjudication has been made by this court as regards merits of the case and all contentions of the parties in revision Application are expressly kept open.

(vi) Parties and concerned court to act upon an authenticated copy of this order.

JUDGE